

1
2
3
4
5
6
7
8
9
10
11
12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 DEXTER HUBERT WHITE,
16 Plaintiff,

17 V.

18 CITY OF LOS ANGELES, LOS ANGELES
19 POLICE DEPARTMENT, COUNTY OF LOS
20 ANGELES, OFFICER CORY MCMICHAEL,
21 OFFICER JAVIER TAFOYA, AND DOES 1
22 TO 10, INCLUSIVE,
23 Defendants.

} Case No: 2:19-cv-00243-DDP-RAO
} [Assigned to the Hon. Judge Dean D.
} Pregerson]

24 } **PROTECTIVE ORDER**

25 } Complaint Filed: 01/10/2019
26 } Trial Date: 6/9/2020
27 }
28

///

///

///

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

B. GOOD CAUSE STATEMENT

This action is likely to involve third party privacy, HIPPA information, peace officer personnel and official information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith

1 belief that it has been maintained in a confidential, non-public manner, and there is
2 good cause why it should not be part of the public record of this case.

3 4 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

5 The parties further acknowledge, as set forth in Section 12.3, below, that this
6 Stipulated Protective Order does not entitle them to file confidential information under
7 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
8 standards that will be applied when a party seeks permission from the court to file
9 material under seal.

10 There is a strong presumption that the public has a right of access to judicial
11 proceedings and records in civil cases. In connection with non-dispositive motions,
12 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
13 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
14 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,
15 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
16 cause showing), and a specific showing of good cause or compelling reasons with
17 proper evidentiary support and legal justification, must be made with respect to
18 Protected Material that a party seeks to file under seal. The parties' mere designation
19 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
20 submission of competent evidence by declaration, establishing that the material sought
21 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
22 constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial, then
24 compelling reasons, not only good cause, for the sealing must be shown, and the relief
25 sought shall be narrowly tailored to serve the specific interest to be protected. *See*
26 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item
27 or type of information, document, or thing sought to be filed or introduced under seal
28

1 in connection with a dispositive motion or trial, the party seeking protection must
2 articulate compelling reasons, supported by specific facts and legal justification, for the
3 requested sealing order. Again, competent evidence supporting the application to file
4 documents under seal must be provided by declaration.

5 Any document that is not confidential, privileged, or otherwise protectable in its
6 entirety will not be filed under seal if the confidential portions can be redacted. If
7 documents can be redacted, then a redacted version for public viewing, omitting only
8 the confidential, privileged, or otherwise protectable portions of the document, shall be
9 filed. Any application that seeks to file documents under seal in their entirety should
10 include an explanation of why redaction is not feasible.

11 12 2. DEFINITIONS

13 2.1 Action: this pending federal lawsuit.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation
15 of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for protection
18 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
19 Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including,
27 among other things, testimony, transcripts, and tangible things), that are produced or
28

1 generated in disclosures or responses to discovery in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
4 expert witness or as a consultant in this Action.

5 2.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association or
9 other legal entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees of a party
11 to this Action but are retained to represent or advise a party to this Action and have
12 appeared in this Action on behalf of that party or are affiliated with a law firm that has
13 appeared on behalf of that party, and includes support staff.

14 2.11 Party: any party to this Action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
22 their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery Material that is
24 designated as "CONFIDENTIAL." A watermark may be affixed to the documents.

25 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 ///

1
2 3. SCOPE

3 The protections conferred by this Stipulation and Order cover not only Protected
4 Material (as defined above), but also (1) any information copied or extracted from
5 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
6 Material; and (3) any testimony, conversations, or presentations by Parties or their
7 Counsel that might reveal Protected Material.

8 Any use of Protected Material at trial shall be governed by the orders of the trial
9 judge. This Order does not govern the use of Protected Material at trial.

10
11 4. DURATION

12 Once a case proceeds to trial, information that was designated as
13 CONFIDENTIAL or maintained pursuant to this protective order used or introduced as
14 an exhibit at trial becomes public and will be presumptively available to all members
15 of the public, including the press, unless compelling reasons supported by specific
16 factual findings to proceed otherwise are made to the trial judge in advance of the trial.
17 *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
18 documents produced in discovery from “compelling reasons” standard when merits-
19 related documents are part of court record). Accordingly, the terms of this protective
20 order do not extend beyond the commencement of the trial.

21
22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under this
25 Order must take care to limit any such designation to specific material that qualifies
26 under the appropriate standards. The Designating Party must designate for protection
27 only those parts of material, documents, items or oral or written communications that
28 qualify so that other portions of the material, documents, items or communications for

1 which protection is not warranted are not swept unjustifiably within the ambit of this
2 Order.

3 Mass, indiscriminate or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to impose
6 unnecessary expenses and burdens on other parties) may expose the Designating Party
7 to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
13 or ordered, Disclosure or Discovery Material that qualifies for protection under this
14 Order must be clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix at a minimum, the legend
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
20 contains protected material. If only a portion of the material on a page qualifies for
21 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
22 by making appropriate markings in the margins).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and before
26 the designation, all of the material made available for inspection shall be deemed
27 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
28

1 copied and produced, the Producing Party must determine which documents, or
2 portions thereof, qualify for protection under this Order. Then, before producing the
3 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to
4 each page that contains Protected Material. If only a portion of the material on a page
5 qualifies for protection, the Producing Party also must clearly identify the protected
6 portion(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in depositions that the Designating Party identifies
8 the Disclosure or Discovery Material on the record, before the close of the deposition
9 all protected testimony.

10 (c) for information produced in some form other than documentary and for
11 any other tangible items, that the Producing Party affix in a prominent place on the
12 exterior of the container or containers in which the information is stored the legend
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants
14 protection, the Producing Party, to the extent practicable, shall identify the protected
15 portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material.
19 Upon timely correction of a designation, the Receiving Party must make reasonable
20 efforts to assure that the material is treated in accordance with the provisions of this
21 Order.

22 23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time that is consistent with the Court’s Scheduling
26 Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
28

1 resolution process under Local Rule 37.1 et seq.

2 6.3 The burden of persuasion in any such challenge proceeding shall be on the
3 Designating Party. Frivolous challenges, and those made for an improper purpose
4 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
5 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
6 withdrawn the confidentiality designation, all parties shall continue to afford the
7 material in question the level of protection to which it is entitled under the Producing
8 Party's designation until the Court rules on the challenge.

9
10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is
12 disclosed or produced by another Party or by a Non-Party in connection with this
13 Action only for prosecuting, defending or attempting to settle this Action. Such
14 Protected Material may be disclosed only to the categories of persons and under the
15 conditions described in this Order. When the Action has been terminated, a Receiving
16 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a
18 location and in a secure manner that ensures that access is limited to the persons
19 authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
21 otherwise ordered by the court or permitted in writing by the Designating Party, a
22 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
23 only to:

24 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
25 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
26 disclose the information for this Action;

27 (b) the officers, directors, and employees (including House Counsel) of the
28

1 Receiving Party to whom disclosure is reasonably necessary for this Action;

2 (c) Experts (as defined in this Order) of the Receiving Party to whom
3 disclosure is reasonably necessary for this Action and who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff;

7 (f) professional jury or trial consultants, mock jurors, and Professional
8 Vendors to whom disclosure is reasonably necessary for this Action and who have
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information;

12 (h) during their depositions, witnesses, and attorneys for witnesses, in the
13 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
14 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
15 not be permitted to keep any confidential information unless they sign the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
17 by the Designating Party or ordered by the court. Pages of transcribed deposition
18 testimony or exhibits to depositions that reveal Protected Material may be separately
19 bound by the court reporter and may not be disclosed to anyone except as permitted
20 under this Stipulated Protective Order; and

21 (i) any mediator or settlement officer, and their supporting personnel,
22 mutually agreed upon by any of the parties engaged in settlement discussions.

23
24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation that
27 compels disclosure of any information or items designated in this Action as
28

1 “CONFIDENTIAL,” that Party must:

2 (a) promptly notify in writing the Designating Party. Such notification shall
3 include a copy of the subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or order to
5 issue in the other litigation that some or all of the material covered by the subpoena or
6 order is subject to this Protective Order. Such notification shall include a copy of this
7 Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued
9 by the Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served with
11 the subpoena or court order shall not produce any information designated in this action
12 as “CONFIDENTIAL” before a determination by the court from which the subpoena
13 or order issued, unless the Party has obtained the Designating Party’s permission. The
14 Designating Party shall bear the burden and expense of seeking protection in that court
15 of its confidential material and nothing in these provisions should be construed as
16 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
17 directive from another court.

18
19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
20 IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a Non-
22 Party in this Action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the remedies
24 and relief provided by this Order. Nothing in these provisions should be construed as
25 prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party’s confidential information in its possession, and the Party is
28

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 (3) make the information requested available for inspection by the Non-
10 Party, if requested.

11 (c) If the Non-Party fails to seek a protective order from this court within 14
12 days of receiving the notice and accompanying information, the Receiving Party may
13 produce the Non-Party's confidential information responsive to the discovery request.
14 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
15 any information in its possession or control that is subject to the confidentiality
16 agreement with the Non-Party before a determination by the court. Absent a court
17 order to the contrary, the Non-Party shall bear the burden and expense of seeking
18 protection in this court of its Protected Material.

19
20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
24 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
25 all unauthorized copies of the Protected Material, (c) inform the person or persons to
26 whom unauthorized disclosures were made of all the terms of this Order, and (d)
27 request such person or persons to execute the "Acknowledgment and Agreement to Be
28

Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party’s request to file Protected Material under seal is

1 denied by the court, then the Receiving Party may file the information in the public
2 record unless otherwise instructed by the court.

3
4 13. FINAL DISPOSITION

5 After the final disposition of this Action, as defined in paragraph 4, within 60
6 days of a written request by the Designating Party, each Receiving Party must return
7 all Protected Material to the Producing Party or destroy such material. As used in this
8 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
9 summaries, and any other format reproducing or capturing any of the Protected
10 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
11 must submit a written certification to the Producing Party (and, if not the same person
12 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
13 category, where appropriate) all the Protected Material that was returned or destroyed
14 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
15 compilations, summaries or any other format reproducing or capturing any of the
16 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
17 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
18 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
19 attorney work product, and consultant and expert work product, even if such materials
20 contain Protected Material. Any such archival copies that contain or constitute
21 Protected Material remain subject to this Protective Order as set forth in Section 4
22 (DURATION).

23 ///

24 ///

25 ///

26 ///

27 ///

1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures including,
3 without limitation, contempt proceedings and/or monetary sanctions.

4
5 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

6
7 Dated: December 23, 2019

_____ /s/ _____

8 HON. ROZELLA A. OLIVER
9 United States Magistrate Judge